IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 170 OF 2005.

Smt. Hirabai P.Shimpi ...Applicant.

V/s.

Mah. State Electricity Board ...Respondents.

Shri A. A. Garge for the applicant.

Miss A.R.S. Baxi for the respondent.

CORAM : A.M. KHANWILKAR, J.

DATED : 14.8.2006.

P.C. :
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1. Heard Counsel for the parties. Perused relevant documents.

2. By the impugned order and judgment dated 13th December 2004, the lower Court has allowed application (Ex.1) in Misc. Application No.75 of 2003, and condoned delay of 873 days which is filed for setting aside exparte decree. Amongst others, the Court below has found that there is no malafide or dilatory tactics on the part of the respondents. Besides, applicant is a statutory body under the Maharashtra State Electricity Act dealing in supplying electric energy to the public at large on

the charge as per fixed tariff. The lower Court has also held that indulgence should be shown to the respondents by taking liberal attitude. Otherwise, it will affect public interest. Counsel for the applicant however, contends that no reason whatsoever was spelt out in the application for condonation of delay filed by the respondent. In such case, contends counsel for the Appellant that question of condoning delay does not arise merely because the appellant happened to be a public body. To butters this contention, reliance is placed on the decision of this Court in the case of **Bombay Municipal Corporation vs. Prabhawati H. Gehani and ors. reported in 2006(4) Mh.L.J.103.** Indeed, in that reported decision it has been held that if no reason whatsoever has been stated in the application for condonation of delay, the Court cannot assume jurisdiction to condone delay in the absence of any reason whatsoever stated in the application. That observation was made on the facts and circumstances of the said case, on finding that no explanation whatsoever was offered in the application filed by the Corporation.

3. In the present case, however, respondents have stated reasons in the application for

condonation of delay. Amongst others, that it was a public body. Besides, it is mentioned that no Court would grant permission to any plaintiff to receive energy without payment of charges due, which is the effect of exparte decree passed in favour of applicant. In para 6 of the application, it is further stated that the respondents have good case on merits and that the applicants who are stated to be occupants, have obtained the ex-parte decree mischievously, fraudulently, by misguiding the Court upon suppression of true facts. It is further stated that the Certified copy of the judgment was applied for on 20th January 2003 when the meter reader from the transferred zone reported the facts and made an application for receiving certified copy of judgment and decree of Reg. Civil Suit No. 269 of 1998 . The period between 20.1.2003 to 14.2.2003 both days inclusive is exempted from limitation under sec. 12 of the Limitation Act. The period between 21.10.2000 to 12.3.2000 needs to be condoned as per separate application made by the applicant and the applicant had no knowledge about the proceedings and of final decree passed in the proceeding. In other words, it is not a case where no reason at all has been mentioned for condonation of delay. The Courts below has examined relevant

documents and exercised discretion in favour of the respondent- applicants herein. That being a discretionary order and the finding recorded by the Court below does not call for interference in exercise of revisional jurisdiction.

4. Counsel for the applicant also relied upon a decision in the case of **Kudas Khan vs. Mohammed Yakub reported in 2002(2) Bom.C.R.82.** In that case, the party was not diligent in filing appeal in time. The Court found that party was not diligent and delay was deliberate. Besides, matter was concerning private parties. Counsel for the applicant relied upon judgment of the Supreme Court in case of **Sri Lal Sah vs. Gubbchand Sah reported in (1993) 1 Civil L.J. 629.** In that case, however, no explanation for condonation of delay was filed. The observation made in the said judgment therefore, is based on the facts of that case. Reliance is then placed on the decision of the Calcutta High Court in the case of **Steel Authority of India Ltd. vs. R.N. Datta reported in AIR 1984 Cal.118.** Emphasis is placed on the exposition in Head Note (D), wherein it is mentioned that the petitioner has to prove that he was diligent and has to explain day to day delay from last day of limitation. In the

present case, respondent had filed application and in para 7 thereof has clearly mentioned the circumstances and period between 21.10.2000 to 12.3.2003 has been explained separately. Accepting that explanation delay has been condoned by the lower Court. I am in agreement with the approach adopted by the court below in condoning delay of 873 days in the facts of the present case. No interference is warranted.

5. Moreover, the Court below, while condoning delay has imposed costs in the amount of Rs. 10,000/-. Having regard to facts and circumstances of the case, the costs so imposed is excessive. However, since there is no challenge to that part of the order by the respondent, Iam not interfering with that direction of the Court.

6. Hence this revision is dismissed.

(A.M. KHANWILKAR,J.)